S.B.Civil Misc.Appeal No.117/93.
BabuLal vs. M/s Shiv Shakti IronCompany

Date of Order: 07.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. J.M. Bhandari for the appellant.
Mr. Amit Mehta for Mr. R.R.Nagori for the respondent.

...

This appeal is against the order dated 6.1.1993 by which the learned first appellate court set aside the judgment and decree of the trial court dated 5.3.1991 passed in Civil Original Suit No.56/1982 and remanded the case to the trial court for deciding the suit afresh after evidence of the parties.

Brief facts of the case are that the plaintiff's suit for eviction of the tenant-appellant was decreed by the trial court by judgment and decree dated 5.3.1991. The defendant did not deposit the rent as required under Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, therefore, the trial court passed the order striking out the defence of the defendant. It is admitted fact of the defendant that the rent was not deposited within time and the rent was deposited after 28 days. Now the law is well settled by the Hon'ble Apex Court in this respect and the delay beyond the period of 15 days in deposit of rent cannot be condoned when default is with respect to deposit of rent month by month. The first appellate court set aside the judgment and decree of the trial court only on the ground that the delay

should have been condoned by the trial court in depositing the rent by invoking power under Section 5 of the Limitation Act. The view taken by the first appellate court is now contrary to the law laid down by the Hon'ble Apex Court.

Therefore, the appeal is allowed. The order of the first appellate court dated 6.1.1993 is set aside. The first appellate court shall now hear the appeal on merit and decide it in accordance with law. Both the parties are directed to appear before the first appellate court on 4.9.2006. The record be sent forthwith to the court below.

(PRAKASH TATIA),J.

mlt.